Supreme Court, U.S.
FILED
MAR 29 2007
OFFICE OF THE CLERK

(4)

No. 06-1169

IN THE

Supreme Court of the United States

SALIM AHMED HAMDAN, PETITIONER,	OMAR KHADR, PETITIONER,
v.	v.
ROBERT GATES, ET AL., RESPONDENTS	GEORGE W. BUSH, ET AL. RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI AND WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMICUS CURIAE BRIEF OF 422 UNITED KINGDOM AND EUROPEAN PARLIAMENTARIANS IN SUPPORT OF PETITIONERS

CLAUDE B. STANSBURY
(*Counsel of Record*)
Freshfields Bruckhaus Deringer LLP
701 Pennsylvania Avenue, NW
Washington, DC 20004-2692
(202) 777-4500

Counsel for Amici Curiae

WILSON-EPES PRINTING CO INC – (202) 789-0096 – WASHINGTON, D C. 20002

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. The Interests Of All Parties And The Wider World Are Served By An Expeditious And Definitive Resolution Of The Important Questions Presented In This Case 5

II. Granting the Petition Is Necessary To Prevent Violations Of International Law 7

A. Insulating Military Commissions From Habeas Review Itself Violates International Law 7

B. Insulating Military Commissions From Habeas Review Would Allow Further Violations Of International Law 11

1. Violation Of Speedy Trial Rights 11

2. Violations Of Generally Recognized Principles Of Regular Judicial Procedure Secured By Common Article 3 13

CONCLUSION 15

APPENDIX 17

TABLE OF AUTHORITIES

CONSTITUTIONAL AND STATUTORY PROVISIONS

Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 ..... 1, 2, 12

U.S. CONST. art. I, § 9, cl. 2 8

U.S. CONST. art. VI, cl. 2 8

U.S. CASES

Ex parte Quirin, 317 U.S. 1 (1942) 6

Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006) ..... *passim*

Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995) 12

Martinez v. City of Los Angeles, 141 F.3d 1373 (9th Cir. 1998) 11

Murray v. The Charming Betsey, 6 U.S. (2 Cranch) 64 (1804) 7, 10

Rasul v. Bush, 542 U.S. 466 (2004) 3

INTERNATIONAL CASES AND OPINIONS

A and Others v. Sec'y of State for the Home Dep't, [2005] H.L.L.R. 1 4

Charkaoui v. Canada (Citizenship and Immigration), 2007 SCC 9, *available at* 2007 Can. Sup. Ct. LEXIS 9 6

Inter-American Court of Human Rights, *Habeas Corpus in Emergency Situations*, Advisory Opinion OC-8/87 of Jan. 30, 1987 9

Inter-American Court of Human Rights, *Judicial Guarantees in States of Emergency*, Advisory Opinion OC-9/87 of Oct. 6, 1987 9

Inter-American Court of Human Rights, *Case of Neira Alegría and Others*, Judgment of Sept. 19, 1996 9

Sextus v. *Trinidad and Tobago*, H.R.C. Communication No. 818/1998, U.N. Doc. CCPR/C/72/D/818/1998 (July 16, 2001) 12

U.N. Human Rights Committee, *General Comment No. 29 (Article 4 of the International Covenant on Civil and Political Rights)*, U.N. Doc. CCPR/C/21/Rev.1/Add.11, General Comment No. 29 (Aug. 31, 2001) 9

TREATIES

American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123 ..... 8, 11

Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 ..... 9, 13

International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 ..... 8, 11

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), *adopted* June 8, 1977, 1125 U.N.T.S. 3 ..... 13, 14

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 8

TREATISES

INTERNATIONAL COMMITTEE OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (2005)..... 9

INTEREST OF THE *AMICI CURIAE*

This brief is submitted on behalf of a group of 422 United Kingdom and European parliamentarians, including 297 current or former Members of the Houses of Parliament of the United Kingdom of Great Britain and Northern Ireland, 113 current or former Members of the European Parliament, and a former Vice President of the European Commission (the "*amici*").[1] The full list of *amici* is attached as an Appendix to this brief.

Amici are drawn from all across Europe, both geographically and politically. The *amicus* group spans the political spectrum, and includes senior figures from all the major political parties in the United Kingdom, including former Cabinet Ministers. The group also includes judges of the highest court in the United Kingdom, senior lawyers, and Bishops of the Church of England.

The same *amicus* group filed briefs in support of Petitioner Hamdan's previous petitions in this Court, when he faced essentially the same "conspiracy" charge (a charge not recognized in the law of war) and the same risk of being subjected to unlawful trial by military commission as he does now. In *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006), this Court upheld Hamdan's claims under the Geneva Conventions and Uniform Code of Military Justice ("UMCJ"). Since then, Congress has enacted the Military Commissions Act of 2006 ("MCA"), Pub. L. No. 109-366, 120 Stat. 2600, section 7 of which the courts below interpreted to require dismissal of Petitioners' habeas petitions.

---

[1] Letters of consent to the filing of this brief have been lodged with the Clerk. No counsel for a party in this case authored the brief in whole or in part and no person or entity other than the *amici* or their counsel made a monetary contribution to the preparation or submission of this brief.

As before, *amici* express no view on whether Petitioners have engaged in acts of terrorism or any conduct in violation of the laws of war, international law more generally, or U.S. law. Nor do *amici* seek to express any view on politics or tactics in the "war on terror" in general. These are questions on which *amici* may hold differing individual views.

Amici have participated in this case from the outset because, despite their divergent political views, they share a common view that it is important to the international legal order that, even when faced with the threat of international terrorism, the United States comply with the standards set by international humanitarian law and human rights law and, fundamentally, with the rule of law itself. *Amici* have previously taken part in these proceedings to call upon this Court to ensure that the treatment accorded to prisoners such as Petitioners—innocent until proven guilty, be they ultimately found to be terrorists or not—meet these standards. In particular, *amici* have come together to endorse the view that, even in the face of the terrorist threat, law and in particular international law has scope to operate and acts to prevent the existence of legal "black holes" within which individuals are stripped of fundamental legal protections recognized by all civilized nations and enshrined in international humanitarian and human rights law.

Amici once again urge this Court to act. *Amici* consider that the provisions of the MCA, such as section 7, which purport to interfere with habeas actions brought by an alien "determined by the United States to have been properly detained as an enemy combatant or...awaiting such determination," fundamentally offend the rule of law and contravene treaties by which the United States is bound and upon which it is built.

The writ of habeas corpus has from the days of King John been fundamental to any valid concept of liberty. It is

the cornerstone of "government of laws and not of men." Building on this ancient foundation, international human rights treaties to which the United States is party enshrine the right of detainees to test the lawfulness of their detention in a court of law. Were the MCA to be found to deny this right to detainees such as Petitioners, this would be incompatible with the rule of law and with the United States' international legal obligations.

Moreover, insulating the military commission process from habeas review, which is the effect of the decisions below, would expose Petitioners to further violations of their human rights and would be inconsistent with the United States' international legal obligations. For a state such as the United States to persist in conduct that defies international law does incalculable violence to the rule of law and to the vitality of international human rights and humanitarian law—binding legal norms that reflect the very principles that differentiate the peoples of civilized nations from those who acquiesce in unlawful acts of terror.

The outcome of this case is of course of enormous personal significance for Petitioners. The rulings of this Court in *Rasul v. Bush*, 542 U.S. 466 (2004), and *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006), reasserted the rule of law and constrained not the Government's conduct of the war on terror but only its efforts to cast individuals detained at Guantanamo Bay out of the reach of legal protection into a legal "black hole." The MCA and the decisions below threaten to undo that process and to deprive Petitioners and other detainees of that most fundamental touchstone of liberty, the writ of habeas corpus. Absent this touchstone, Petitioners have no means to vindicate their well founded claims that trial by military commission would violate their fundamental rights.

Each member of the *amicus* group has been privileged to serve a state committed to the rule of law, and

each has an interest in seeing the rule of law upheld. Insofar as the provisions of the MCA that purport to insulate the military commissions from habeas review stand, the United States will in effect have declared that the fundamental principle of the rule of law upon which this nation was built is set aside in the face of a terrorist threat. That would bode ill for the future of all liberal democracies and the efforts of the community of liberal democracies to encourage and enforce respect for international human rights and humanitarian norms and the rule of law around the world. Accordingly, *amici* urge this Court, with the eyes of the world now turned toward it, to grant the Petition and affirm that the United States will not sacrifice the integrity of its legal system and the values which it espouses and holds dear to the terrorist threat.

To paraphrase Lord Hoffman's speech in the House of Lords, describing the stark choice the Government of the United Kingdom faced when deciding on rules for the detention of terrorist suspects: "The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve. It is for [this Court] to decide whether to give the terrorists such a victory." *A and Others v. Sec'y of State for the Home Dep't*, [2005] H.L.L.R. 1, 53 (per Lord Hoffman).

SUMMARY OF ARGUMENT

Amici believe that (i) the gravity of the issues involved, issues which concern not only the parties but all nations and most particularly those who share the commitment of the United States to the rule of law and (ii) the need to halt violations of international law by the United

States require that the Petition be granted and the case be heard by this Court on an expedited basis.

ARGUMENT

I. The Interests Of All Parties And The Wider World Are Served By An Expeditious And Definitive Resolution Of The Important Questions Presented In This Case.

Amici appreciate that the procedure contemplated in the Petition is extraordinary. However, the circumstances of this case and the significance of the legal questions presented are also extraordinary. Without doubt, the matters raised are of imperative public importance and merit immediate determination by this Court.

Granting the Petition at this stage will serve the interests of all parties. Petitioners are crucially concerned with ensuring the legitimacy of any process to which they will be subject. The judgments below effectively deny them any forum in which to do so. In protecting Petitioners from being subject to an unlawful process, time is of the essence, as the Government has indicated that it plans to commence trials before military commissions pursuant to the MCA at the earliest opportunity, which may be as early as late Spring of this year. Unless this Court acts to ensure that Petitioners may be heard, they will face prosecution in a process which both the international community and history may ultimately regard as unjust and unworthy of the United States' long commitment to human rights and the rule of law.

For this reason, the interests of the United States will also be served by this Court granting the Petition: Until Petitioners' challenge to the legality of the military commission process is heard and resolved in regularly constituted courts of law, the legitimacy of that process will

continue to be questioned, as will the commitment of the United States to the rule of law. The decisions below threaten to bar any consideration of Petitioners' well-founded allegations that the military commission process denies them fundamental rights that are secured by, among other things, treaties to which the United States is a party and by which it is bound.

The significance of the issues raised is not restricted to the national level. Habeas corpus and the commitment to the rule of law and fundamental principles of liberty that it reflects are the common heritage of civilized nations. The writ itself pre-existed the United States, and it is embodied in the national law of countless countries and, importantly, in multiple international human rights treaties by which the United States is bound. The Supreme Court of Canada recently reaffirmed the enduring importance of habeas corpus to civilized nations. *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, *available at* 2007 Can. Sup. Ct. LEXIS 9. For these reasons, this Court's ruling on the scope of habeas jurisdiction will resound within legal systems worldwide, both national and international. And any deviation from the liberty and rule of law values enshrined in the Great Writ would pose a challenge to efforts by the community of liberal democracies to encourage and enforce commitment to due process and the rule of law around the world.

Amici recall that this Court has granted certiorari before judgment in the past where cases of such exceptional importance have come before it. The case for certiorari before judgment is at least as strong, if not stronger, here than it was in *Ex parte Quirin*, 317 U.S. 1, 19 (1942), where this Court granted certiorari before judgment "[i]n view of the public importance of the questions raised...and because in [the Court's] opinion the public interest required that [the Court] consider and decide those questions without any

avoidable delay." This is a case which has serious and urgent implications for Petitioners, the United States and the international community more generally. In light of the extraordinary circumstances of this case and the significance of the legal questions presented, *amici* urge the Court to grant the Petition.

II. Granting The Petition Is Necessary To Prevent Violations Of International Law.

A further imperative is for the United States to come back into compliance with its binding obligations under international law. The MCA, both in its "jurisdiction-stripping" provisions and its provisions relating to the military commission process, violates international law in that it denies to Petitioners fundamental rights secured by international human rights treaties and Common Article 3 of the Geneva Conventions of 1949, by which the United States is bound. The Court can avoid this violation by granting the Petition and interpreting the MCA consistently with international law, *cf. Murray v. The Charming Betsey*, 6 U.S. (2 Cranch) 64, 118 (1804) ("an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains"), or invalidating those aspects of the statute that contravene international law.

A. Insulating Military Commissions From Habeas Review Itself Violates International Law.

Were the Government to succeed in denying the jurisdiction of the courts even to hear claims concerning the legality of continued detention and the military commission process to which Petitioners are to be subjected, this would directly conflict with the clear and well settled principle of international human rights law, by which the United States is bound, that a detainee has the right to challenge the legality of his detention in court. This Court should grant the Petition

in order to prevent this violation of international law by the United States.

The fundamental right of an individual detained by authority of a state to challenge the legality of his detention is enshrined in numerous instruments of international law that bind the United States, including:

(1) Article 9(4) of the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 ("ICCPR"): "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful"; and

(2) Article 7(6) of the American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123 ("ACHR"): "Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful."

The United States has ratified the ICCPR and is therefore bound by its terms. *See* U.S. CONST. art. VI, cl. 2. Although the United States has not ratified the ACHR, it has signed it and is therefore bound not to defeat its object and purpose and must avoid taking any action that is inconsistent with the rights set out therein. *See* Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

The right articulated in article 9(4) of the ICCPR and article 7(6) of the ACHR has its origins in the Anglo-American writ of habeas corpus; these treaty provisions mirror in international law the protections enshrined in national law provisions, including the provisions of article I, section 9, clause 2 of the United States Constitution. The obligation to provide a person deprived of liberty with an

opportunity to challenge the lawfulness of detention (described by scholars of international law as the right of habeas corpus) is also recognized as an aspect of the customary international law of war. *See* INTERNATIONAL COMMITTEE OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 349-52 (2005).

As such, the right to challenge the legality of detention is one of the most fundamental of the "judicial guarantees which are recognized as indispensable by civilized people" referred to in Common Article 3 of the 1949 Geneva Conventions. *See, e.g.*, Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 3318, 75 U.N.T.S. 135. Indeed, although some of the rights protected by international law may be derogated from in time of war or emergency, international tribunals charged with the application and implementation of international human rights treaties concur that this particular right cannot be made to yield. *See* Inter-American Court of Human Rights, *Habeas Corpus in Emergency Situations*, Advisory Opinion OC-8/87 of Jan. 30, 1987; Inter-American Court of Human Rights, *Judicial Guarantees in States of Emergency*, Advisory Opinion OC-9/87 of Oct. 6, 1987; Inter-American Court of Human Rights, *Case of Neira Alegria and Others*, Judgment of Sept. 19, 1996 (characterizing the writ of habeas corpus as among those judicial remedies that are "essential" for the protection of fundamental rights that persist in times of war or emergency). *See also* U.N. Human Rights Committee, *General Comment No. 29 (Article 4 of the International Covenant on Civil and Political Rights)*, U.N. Doc. CCPR/C/21/Rev.1/Add.11, General Comment No. 29 (Aug. 31, 2001) ("[I]n order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.").

This Court has already recognized that the protections of Common Article 3 apply to Petitioner Hamdan (and others in his position, including Petitioner Khadr). See *Hamdan*, 126 S. Ct. at 2795-96 (concluding that "Common Article 3...is applicable here and...requires that Hamdan be tried by a 'regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples'"); *id.* at 2802 (Kennedy, J., concurring) (describing Common Article 3 as "one provision of the law of war that is applicable to our Nation's armed conflict with al Qaeda in Afghanistan and, as a result, to the use of a military commission to try Hamdan" and observing that this "provision is part of a treaty the United States has ratified and thus accepted as binding law"). The strictures of the ICCPR and the ACHR, as well as customary international law, also oblige the United States to provide Petitioners with means of challenging the legality of their detention.

In the law of the United States, the means by which individuals detained by the power of the state vindicate this right has been through the mechanism of habeas corpus. The District Court found that, pursuant to the MCA, the writ of habeas corpus is not available to Petitioners to challenge the legality of their detention. Accordingly, the effect of the judgments below is to deny Petitioners' fundamental human rights, rights which the United States has pledged itself to uphold and is legally bound to secure. The Court can and should prevent this violation of international law, *cf. The Charming Betsey*, 6 U.S. (2 Cranch) at 118, by granting the Petition and reaffirming the Petitioners' access to the writ of habeas corpus.

B. Insulating Military Commissions From Habeas Review Would Allow Further Violations Of International Law.

The treatment of Petitioners and others detained at Guantanamo Bay (and elsewhere), to date and under the MCA, deviates from the most basic and fundamental norms of procedural fairness, respect for liberty and due process that are recognized in international law. The Court should grant the Petition in order to enable meaningful judicial scrutiny of the military commission process and to halt these violations.

1. Violation Of Speedy Trial Rights.

Chief among the violations of Petitioners' rights is the denial of a speedy trial to resolve the allegations belatedly made against them. The right to a speedy trial, which is a fundamental component of the right to a fair trial, is enshrined in numerous instruments of international law, including:

(1) Article 9(3) of the ICCPR, which states that "[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release"; and

(2) Article 7(5) of the ACHR, which provides that "any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings".

Accordingly, U.S. courts recognize the right to a speedy trial, as protected by international law. In *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1384 (9th Cir. 1998), citing the Restatement (Third) of the Foreign Relations Law

of the United States and various international instruments, including the ICCPR, the Court of Appeals held that "there is a clear international prohibition against arbitrary arrest and detention", and that "detention is arbitrary 'if ...the person detained is not brought to trial within a reasonable time'." 141 F.3d at 1384; *accord Kadic v. Karadzic*, 70 F.3d 232, 242 (2d Cir. 1995).

Significantly shorter periods of pre-trial detention than those which Petitioners have endured have been found to violate international law. *See, e.g., Sextus v. Trinidad and Tobago*, H.R.C. Communication No. 818/1998, U.N. Doc. CCPR/C/72/D/818/1998 (July 16, 2001) (holding that a period of twenty-two months' detention violated ICCPR article 9(3)). The United States has not complied with its obligations under the ICCPR or the ACHR by holding Petitioners in pre-trial detention for some five years. And the MCA explicitly denies to Petitioners and other detainees the right to a speedy trial. *See* MCA, *supra*, § 3(a) (disapplying provisions of UCMJ relating to speedy trial to trial by military commission).

It is no answer to say that the military commissions under the MCA will shortly provide the right to a fair trial which has hitherto been denied the Petitioners: the violation of the speedy trial right has already occurred, and indefinite detention without even the prospect of a trial continues for scores, if not hundreds, of individuals detained by the United States. Moreover, the right to a speedy trial is the right to a prompt *and fair* trial, and Petitioners' allegation that the military commission process is unfair is precisely the subject matter of the habeas petitions which the lower courts have dismissed.

2. Violations Of Generally Recognized Principles Of Regular Judicial Procedure Secured By Common Article 3.

Petitioners' claims that military commissions will not provide a process that meets basic standards of fairness and due process are well founded. In at least two respects, the military commission process under the MCA will deny Petitioners the "judicial guarantees which are recognized as indispensable by civilized nations" that are required under Common Article 3.

First, the MCA authorizes military commissions to try Petitioners for the charge of "conspiracy," which is not a recognized violation of the law of war, *see Hamdan*, 126 S. Ct. at 2779 (plurality opinion). In construing the reference in Common Article 3 to "judicial guarantees which are recognized as indispensable by civilized nations" this Court has found authoritative guidance in Article 75 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), *adopted* June 8, 1977, 1125 U.N.T.S. 3. As was observed in *Hamdan*:

> this phrase is not defined in the text of the Geneva Conventions. But it must be understood to incorporate at least the barest of those trial protections that have been recognized by customary international law. Many of these are described in Article 75 of Protocol I to the Geneva Conventions of 1949.... Although the United States declined to ratify Protocol I, its objections were not to Article 75 thereof. Indeed, it appears that the Government "regard[s] the provisions of Article 75 as an articulation of safeguards to which all persons in the hands of an enemy are entitled."

Hamdan, 126 S. Ct. at 2797 (plurality opinion of Stevens, J.) (citation omitted); *see also id.* at 289 (Kennedy, J., concurring) (referring to Article 75). One of these fundamental safeguards is the principle that "No one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed." *See* Protocol I, *supra*, art. 75(4)(c). Accordingly, trying Petitioners for conspiracy under an *ex post facto* standard violates the "judicial guarantees" secured by Common Article 3.

Second, the MCA authorizes military commissions to convict Petitioners on the basis of any evidence, even hearsay evidence, that is deemed "reliable" and "probative." Yet Petitioners are not entitled to discover information about the sources of this information or the methods—including cruel, inhuman or degrading treatment just short of torture, which will not result in the exclusion of evidence—by which it was obtained. A similar feature of the military commissions' structure at issue in Hamdan's previous petition to this Court was described by the Court as a "striking feature" of the ways in which the military commission process deviated from normal procedure, *Hamdan*, 126 S. Ct at 2786, and it certainly will materially prejudice Petitioners' ability to defend themselves in military commission proceedings. For this reason, the military commission process fails to "afford the accused before and during his trail all reasonable rights and means of defense," as is required by article 75(4)(a) of Protocol I, and to secure to Petitioners "the right to examine, or have examined, the witnesses against him," recognized in article 75(4)(g) of Protocol I.

For these reasons, the MCA removes the "judicial guarantees which are recognized as indispensable by civilized nations" as is required by Common Article 3, the international legal standard which this Court has already said

applies to their treatment and trial by military commission. In these circumstances, the Court should grant the Petition and keep the doors of the courts open to Petitioners. This is the only way to vindicate the rights guaranteed to Petitioners under international law and the only way to ensure that the military commission process will comply with the United States' international legal obligations.

CONCLUSION

As the Government of the United States has itself so often stated, the war on terror is an epic struggle between lawless forces who deny our common humanity and who disregard the most basic rules of civilized behavior and the rest of the world—committed to liberty, equality before the law and the rule of law. This struggle surfaces in the "jurisdiction-stripping" provisions of the MCA, and their assault on the rule of law. The Court should grant the Petition in order to continue in the direction it has taken in *Rasul* and *Hamdan*: to prevent the creation of a legal "black hole"; to counter the isolation of individuals detained at Guantanamo Bay, and their treatment, from legal scrutiny; and to ensure that the standards that the United States and its legal system uphold are extended, as they are required under international law to be, to people under the control of the United States. In so doing, the Court can reinforce human rights and the rule of law, ensure compliance with the international legal obligations of the United States, and do great service to the authority of international law generally

and, specifically, to the liberal principles upon which the world's democratic states are founded.

Respectfully submitted,

CLAUDE STANSBURY
(*Counsel of Record*)
Freshfields Bruckhaus Deringer LLP
701 Pennsylvania Avenue, NW
Washington, DC 20004-2692
(202) 777-4500

March 29, 2007 *Counsel for Amici Curiae*

APPENDIX

APPENDIX

LIST OF AMICI

HOUSES OF PARLIAMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND MEMBERS OF THE EUROPEAN PARLIAMENT

The House of Lords

The Lord Ahmed
The Lord Alderdice
The Lord Allen of Abbeydale, GCB
The Lord Alton of Liverpool, CB
The Rt Hon the Lord Archer of Sandwell, QC PC
The Lord Avebury
The Lord Berkeley, OBE
The Lord Bhatia, OBE
The Viscount Bledisloe, QC
The Baroness Bonham-Carter of Yarnbury
The Rt Hon the Baroness Boothroyd, OM PC
The Lord Borrie, QC
The Rt Hon the Baroness Bottomley of Nettlestone, DL PC
The Lord Bowness, CBE DL
The Lord Brennan, QC
The Rt Hon the Lord Bridge of Harwich, PC
The Lord Bridges, GCMG
The Rt Hon the Lord Brittan of Spennithorne, QC DL PC
The Rt Hon the Lord Brooke of Sutton Mandeville, CH PC
The Viscount Brookeborough, DL
The Rt Hon the Lord Browne-Wilkinson, PC
The Lord Campbell of Alloway, ERD QC
The Lord Cameron of Dillington
The Rt Hon the Lord Cameron of Lochbroom, QC
The Rt Rev and Rt Hon the Lord Carey of Clifton, PC

The Lord Carlile of Berriew, QC
The Baroness Chapman
The Lord Chidgey
The Lord Clarke of Hampstead, CBE
The Lord Clement-Jones, CBE
The Rt Hon the Lord Clinton-Davis, PC
The Lord Cobbold, DL
The Lord Corbett of Castle Vale
The Rt Hon the Baroness Corston, PC
The Lord Dahrendorf, KBE
The Lord Dearing, Kt CB
The Lord Dholakia, OBE DL
The Lord Donoughue
The Baroness D'Souza, CMG
The Lord Dykes
The Viscount Falkland
The Baroness Falkner of Margravine
The Lord Faulkner of Worcester
The Rt Hon the Lord Fellowes, GCB GCVO QSO PC
The Rt Hon the Lord Fraser of Carmyllie, QC PC
The Lord Freyberg
The Lord Garden, KCB
The Lord Goodhart, QC
The Lord Grabiner, QC
The Lord Greaves
The Baroness Greengross, OBE
The Lord Grenfell
The Rt Rev and Rt Hon the Lord Habgood, PC
The Baroness Hamwee
The Lord Hannay of Chiswick, CH GCMG
The Baroness Harris of Richmond, DL
The Rt Rev the Lord Harries of Pentregarth
The Lord Haskins
The Rt Hon the Lord Holme of Cheltenham, CBE PC
The Lord Hooson, QC
The Baroness Howarth of Breckland, OBE

The Rt Hon the Lord Howe of Aberavon, CH QC Kt PC
The Baroness Howe of Idlicote, CBE
The Baroness Howells of St Davids, OBE
The Rt Hon the Lord Hurd of Westwell, CH CBE PC
The Lord Hutchinson of Lullington, QC
The Lord Hylton
The Rt Hon the Lord Jauncey of Tullichettle, PC
The Lord Joffe, CBE
The Rt Hon the Lord Jones, PC
The Lord Judd
The Baroness Kennedy of The Shaws, QC
The Lord Kerr of Kinlochard, GCMG
The Rt Hon the Lord King of Bridgwater, CH PC
The Rt Hon the Lord Kinnock, PC
The Lord Knights, CBE QPM DL
The Lord Laming, CBE DL
Professor the Lord Layard
The Lord Lea of Crondall, OBE
The Rt Hon the Lord Lloyd of Berwick, DL PC
The Rt Hon the Lord Lyell of Markyate, QC PC
The Lord Macaulay of Bragar, QC
The Rt Hon the Lord MacKay of Clashfern, KT PC
The Rt Hon the Lord Maclennan of Rogart, PC
The Lord McCluskey, QC
The Baroness Maddock
The Lord Maginnis of Drumglass
The Baroness Mallalieu, QC
The Rt Hon the Lord Mayhew of Twysden, QC DL PC
The Baroness Miller of Chilthorne Domer
The Rt Hon the Lord Millett, PC
The Lord Monson
The Viscount Montgomery of Alamein, CMG CBE
Professor the Lord Morgan
The Baroness Neuberger, DBE
The Lord Newby, OBE
The Lord Nickson, KBE

The Baroness Northover
The Lord Oakeshott of Seagrove Bay
The Rt Hon the Lord Oliver of Aylmerton, PC
The Lord Ouseley
The Lord Palmer
The Lord Peston
The Lord Phillips of Sudbury, OBE
The Rt Hon the Lord Phillips of Worth Matravers, PC
Professor the Lord Plant of Highfield
The Lord Prys-Davies
The Lord Puttnam, CBE
Professor the Lord Quirk, CBE
General the Lord Ramsbotham, GCB CBE
The Rt Hon the Lord Radice, PC
The Lord Razzall, CBE
The Lord Rea of Eskdale
The Lord Redesdale
The Rt Hon the Lord Rees, QC PC
The Lord Rees of Ludlow, FRS
The Lord Rees-Mogg
The Baroness Rendell of Babergh, CBE
The Rt Hon the Lord Renton, KBE QC TD DL PC
The Rt Hon the Lord Richard, QC PC
The Rt Rev the Baroness Richardson of Calow, OBE
The Rt Hon the Lord Roper, PC
The Lord Russell-Johnston
The Lord St John of Bletso
The Lady Saltoun of Abernethy
The Earl of Sandwich
The Baroness Sharp of Guildford
The Rt Hon the Lord Sheldon, PC
Professor the Lord Skidelsky
The Lord Smith of Clifton
The Rt Hon the Lord Smith of Finsbury, PC
The Rt Hon the Lord Steel of Aikwood, KT KBE DL PC
The Baroness Stern, CBE

The Lord Stevenson of Coddenham, CBE
The Lord Stoddart of Swindon
The Lord Taverne, QC
The Lord Taylor of Warwick
The Rt Hon the Lord Templeman, MBE PC
The Viscount Tenby
The Lord Thomas of Gresford, OBE QC
The Lord Thomas of Swynnerton
The Baroness Thomas of Walliswood, OBE DL
The Rt Hon the Lord Thomson of Monifieth, KT PC
The Lord Tombs
The Baroness Tonge
The Lord Tope, CBE
The Lord Tordoff
The Lord Tyler, CBE DL
The Baroness Uddin
The Lord Vallance of Tummel
The Lord Wallace of Saltaire
The Rt Hon the Lord Waddington, GCVO DL QC PC
The Baroness Walmsley
The Lord Walpole
The Lord Walton of Detchant, TD
The Baroness Warnock, DBE
Professor the Lord Wedderburn of Charlton, QC
The Baroness Whitaker
The Baroness Wilkins
The Rt Hon the Baroness Williams of Crosby, PC
The Lord Wilson of Dinton, GCB
The Rt Hon the Lord Windlesham, CVO PC
The Lord Wright of Richmond, GCMG

Bishops

The Rt Rev the Lord Bishop of Chelmsford, John Warren Gladwin
The Rt Rev the Lord Bishop of Chester, Dr Peter Robert Forster
The Rt Rev the Lord Bishop of Coventry, Colin James Bennetts
The Rt Rev the Lord Bishop of Exeter, Michael Laurence Langrish
The Rt Rev the Lord Bishop of Liverpool, Dr James Jones
The Rt Rev the Lord Bishop of Norwich, Graham Richard James
The Rt Rev the Lord Bishop of Portsmouth, Kenneth William Stevenson
The Rt Rev the Lord Bishop of Salisbury, David Staffurth Stancliffe
The Rt Rev the Lord Bishop of Southwell and Nottingham, George Henry Cassidy
The Rt Rev the Lord Bishop of St Edmundsbury and Ipswich, Richard Lewis
The Rt Rev the Lord Bishop of Winchester, Michael Charles Scott-Joynt
The Rt Rev the Lord Bishop of Worcester, Peter Stephen Maurice Selby

The House of Commons

Diane Abbott, MP
Danny Alexander, MP
The Rt Hon James Arbuthnot, MP
John Austin, MP
Vera Baird, QC, MP
Norman Baker, MP
Harry Barnes, former MP
Anne Begg, MP
Dr Roger Berry, MP
Harold Best, former MP
Peter Bottomley, MP
Tom Brake, MP
Colin Breed, MP
Annette Brooke, MP
The Rt Hon Malcolm Bruce, MP
Richard Burden, MP
Lorely Burt, MP
Dr Vincent Cable, MP
Anne Campbell, former MP

The Rt Hon Sir Menzies Campbell, CBE QC, MP
Alistair Carmichael, MP
Martin Caton, MP
Nick Clegg, MP
Harry Cohen, MP
Tony Colman, former MP
Derek Conway, MP
Frank Cook, MP
Jeremy Corbyn, MP
Brian Cotter, former MP
Jim Cousins, MP
Thomas Cox, former MP
Ross Cranston, QC, former MP
Mary Creagh, MP
Ann Cryer, MP
Edward Davey, MP
Valerie Davey, former MP
Janet Dean, MP
Andrew Dismore, MP
Jim Dobbin, MP
Sue Doughty, former MP
David Drew, MP
Julia Drown, former MP
Huw Edwards, former MP
Bill Etherington, MP
Annabelle Ewing, former MP
Tim Farron, MP
Mark Fisher, MP
George Galloway, MP
Edward Garnier, QC, MP
Andrew George, MP
Neil Gerrard, MP
Roger Godsiff, MP
Matthew Green, former MP
Win Griffiths, former MP
John Grogan, MP

The Rt Hon John Gummer, MP
Mike Hancock, CBE, MP
Dr Evan Harris, MP
Nick Harvey, MP
Dai Havard, MP
David Heath, CBE, MP
David Heyes, MP
Paul Holmes, MP
Martin Horwood, MP
Christopher Huhne, MP, former MEP
Glenda Jackson, CBE, MP
Helen Jackson, former MP
Dr Lynne Jones, MP
Paul Keetch, MP
David Kidney, MP
Peter Kilfoyle, MP
Norman Lamb, MP
David Laws, MP
Mark Lazarowicz, MP
John Leech, MP
Terry Lewis, former MP
Tony Lloyd, MP
Elfyn Llwyd, MP
Tim Loughton, MP
Ian Lucas, MP
Christine McCafferty, MP
John McDonnell, MP
Ann McKechin, MP
Kevin McNamara, former MP
Calum MacDonald, former MP
Alice Mahon, former MP
Judy Mallaber, MP
Rob Marris, MP
Robert Marshall-Andrews, QC, MP
Michael Moore, MP
Julie Morgan, MP

Mark Oaten, MP
Sandra Osborne, MP
Dr Nick Palmer, MP
Gordon Prentice, MP
Adam Price, MP
Dr John Pugh, MP
Geoffrey Robinson, MP
Dan Rogerson, MP
Paul Rowen, MP
Joan Ruddock, MP
Bob Russell, MP
Mohammad Sarwar, MP
Malcolm Savidge, former MP
Brian Sedgemore, former MP
Richard Shepherd, MP
The Rt Hon Clare Short, MP
Alan Simpson, MP
Llewellyn Smith, former MP
Paul Stinchcombe, former MP
The Rt Hon Dr Gavin Strang, MP
Andrew Stunell, OBE, MP
Jo Swinson, MP
Sir Teddy Taylor, former MP
Sarah Teather, MP
Simon Thomas, former MP
John Thurso, MP
Dr Desmond Turner, MP
Bill Tynan, former MP
The Rt Hon Keith Vaz, MP
Theresa Villiers, MP, former MEP
Dr Rudi Vis, MP
Robert Walter, MP
Robert Wareing, MP
Professor Steve Webb, MP
Brian White, former MP
Betty Williams, MP

Mark Williams, MP
Roger Williams, MP
Phil Willis, MP
Jenny Willott, MP
Tony Worthington, former MP
Anthony David Wright, MP
Derek Wyatt, MP

The European Parliament

Alexander Nuno Alvaro, MEP
Georgs Andrejevs, MEP
Elspeth Attwooll, MEP
Angelika Beer, MEP
Margrietus van den Berg, MEP
Thijs Berman, MEP
John Bowis, MEP
Sharon Bowles, MEP
Hiltrud Breyer, MEP
Elmar Brok, MEP
Kathalijne Maria Buitenweg, MEP
Niels Busk, MEP
Maria Arlette Carlshamre, MEP
Michael Cashman, MEP
Jean-Marie Cavada, MEP
Jorgo Chatzimarkakis, MEP
Richard Corbett, MEP
Chris Davies, MEP
Veronique de Keyser, MEP
Gérard Deprez, MEP
Nirj Deva, MEP
Avril Doyle, MEP
Andrew Duff, MEP
Raymonde Dury, former MEP
Said El Khadraoui, MEP
Maria da Assunção Esteves, MEP

Jill Evans, MEP
Robert Evans, MEP
Szabolcs Fazakas, MEP
Jardim Fernandes, MEP
Hélène Flautre, MEP
Glyn Ford, MEP
Neena Gill, MEP
Hélène Goudin, MEP
Fiona Hall, MEP
Gábor Harangozó, MEP
Marian Harkin, MEP
Satu Maijastiina Hassi, MEP
Adeline Hazan, MEP
Christopher Heaton-Harris, MEP
Jeanine Hennis-Plasschaert, MEP
Edit Herczog, MEP
Mary Honeyball, MEP
Milan Horáček, MEP
Richard Howitt, MEP
Ian Hudghton, MEP
Stephen Hughes, MEP
Sophia Helena in't Veld, MEP
Caroline Jackson, MEP
Jelko Kacin, MEP
Gisela Kallenbach, MEP
Sajjad Haider Karim, MEP
Glenys Kinnock, MEP
Wolf Klinz, MEP
Silvana Koch-Mehrin, MEP
Magda Kósáné Kovacs, MEP
Holger Krahmer, MEP
Jan Jerzy Kulakowski, MEP
Jean Lambert, MEP
Alexander Graf Lambsdorff, MEP
Stéphane Le Foll, MEP
Enrico Letta, MEP

Katalin Lévai, MEP
Marie-Noëlle Lienemann, MEP
Alain Lipietz, MEP
Caroline Lucas, MEP
The Baroness Sarah Ludford, MEP
Elizabeth Lynne, MEP
Jules Maaten, MEP
Cecilia Malmstrom, MEP
Erika Mann, MEP
David Martin, MEP
Marios Matsakis, MEP
Linda McAvan, MEP
Arlene McCarthy, MEP
Edward McMillan-Scott, MEP
Claude Moraes, MEP
Eluned Morgan, MEP
Luisa Morgantini, MEP
Pasqualina Napoletano, MEP
Bill Newton Dunn, MEP
Gérard Onesta, MEP
Josu Ortuondo Larrea, MEP
Cem Özdemir, MEP
Neil Parish, MEP
Lapo Pistelli, MEP
John Purvis, MEP
Raül Romera I Rueda, MEP
Heide Rühle, MEP
Aloyzas Sakalas, MEP
Anders Samuelsen, MEP
Toomas Savi, MEP
Luciana Sbarbati, MEP
Carl Schlyter, MEP
Frithjof Schmidt, MEP
Elisabeth Schroedter, MEP
Frank Schwalba-Hoth, former MEP
Peter Skinner, MEP

Dirk Sterckx, MEP
Struan Stevenson, MEP
Catherine Stihler, MEP
István Szent-Iványi, MEP
Csaba Sándor Tabajdi, MEP
Gary Titley, MEP
Claude Turmes, MEP
Paavo Väyrynen, MEP
Johannes Voggenhuber, MEP
Diana Wallis, MEP
Graham Watson, MEP
Philip Whitehead, MEP
Anders Wijkman, MEP
Terry Wynn, MEP
Tatjana Ždanoka, MEP